

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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U.S. DISTRICT COURT
MARYLAND
OCT 12 2006

SCOTT OSBOURNE

v.

UNITED STATES OF AMERICA

: CIVIL NO. CCB-05-2599
: Criminal No. CCB-02-043

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MEMORANDUM

In August 2005, Scott Osbourne filed a "Motion for Good Faith Consideration of Immediate Release," which the court construed as a petition under 28 U.S.C. § 2241 and will further grant leave to file in forma pauperis for preliminary review. The motion has been considered but must be denied.

Following his guilty plea on a narcotics conspiracy charge, on November 1, 2002 Osbourne was sentenced to 57 months imprisonment with a recommendation for participation in the Bureau of Prisons' ("BOP") Intensive Corrections Center "boot-camp" program. Unfortunately, just before he was scheduled to enter the program in January 2005 (which apparently had been delayed from an earlier date), the BOP discontinued the program for budgetary reasons.

In his present Motion, Osbourne sought immediate release on the grounds that discontinuance of the boot camp program violated the Ex Post Facto Clause and the notice and comment requirement for agency rulemaking under the APA. *See Castellini v. Lappin*, 365 F.Supp.2d 197 (D. Mass. 2005). Regardless of the merits of those arguments, I have no jurisdiction to order immediate release as a remedy, nor would that be appropriate, although I am

of course hopeful Mr. Osbourne will do well once his sentence is complete.¹

Accordingly, the motion will be dismissed without prejudice by separate order.

October 12, 2006

Date

/s/

CCB

Catherine C. Blake
United States District Judge

¹ As I advised Mr. Osbourne in response to earlier correspondence, his anticipated release to a halfway house followed by compliance with the terms of supervised release appeared to offer the best opportunity for his continued progress and successful rehabilitation, as he says is his intention.